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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ESTEBAN SOSA,

Defendant and Appellant.

E056025

(Super.Ct.No. FVI1000420)

OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Tomberlin,
Judge. Affirmed.

Donna L. Harris, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

PROCEDURAL BACKGROUND

By way of a second amended information filed on April 14, 2011, defendant Jose Esteban Sosa¹ was charged with the murder of Jesus Pena Rocha (the victim). (Pen. Code, § 187, subd. (a).) It was further alleged that a principal personally and intentionally discharged a firearm, which proximately caused the death of the victim within the meaning of section 12022.53, subdivisions (d) and (e)(1); that a principal personally and intentionally discharged a firearm within the meaning of section 12022.53, subdivisions (c) and (e)(1); that a principal personally used a firearm, a shotgun, within the meaning of section 12022.53, subdivisions (b) and (e)(1); and that the murder was intentional and carried out for financial gain by the other defendants within the meaning of section 190.2, subdivision (a)(1).

On June 24, 2011, defendant entered into a plea agreement. In exchange for his agreement to testify for the prosecution, defendant was allowed to plead guilty to voluntary manslaughter (§ 192, subd. (a)) as a lesser offense, and to kidnapping (§ 207, subd. (a)). Defendant also admitted that a principal was armed in the commission of the voluntary manslaughter (§ 12022, subd. (a)(1)). The parties agreed to a stipulated sentence of 13 years eight months in state prison. Defendant waived any custody credits accrued up to and including June 24, 2011. The remaining charges and allegations were dismissed. Defendant acknowledged his understanding of all of the terms of the plea agreement, and the trial court accepted his plea. On December 16, 2011, defendant was

¹ There were others charged with the murder; however, this appeal involves defendant only and thus we limit our discussion to defendant.

sentenced pursuant to his bargain. On August 15, 2012, the abstract of judgment was corrected nunc pro tunc as of December 16, 2011, to reflect that the restitution fine is joint and several.

On or about February 18, 2012, defendant, in propria persona, filed a petition for an order granting presentence custody and conduct credits, including credits for the period of time between his arrest and his plea on June 24, 2011. The trial court denied defendant's request, finding that the credits awarded at the time of sentencing were correct. On March 29, 2012, defendant requested a certificate of probable cause regarding the denial of his request for presentence custody and conduct credits on the grounds that he "was mislead [*sic*] & misinstructed to wave [*sic*] in fact without signing a valid waver [*sic*] and only signed plea agreement." His request was denied on April 5, 2012.

DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case but no potential arguable issues.² Counsel has also requested this court to undertake a review of the entire record.

² Defendant's counsel questions whether the trial court erred by denying defendant's motion for additional presentence custody credits in this matter where defendant claims he did not understand that he waived the credits as part of his plea agreement.

We provided defendant with an opportunity to file a personal supplemental brief, which he has not done.

We have now concluded our independent review of the entire record and find no arguable issues. (*People v. Kelly* (2006) 40 Cal.4th 106, 124.)

DISPOSITION

The judgment is affirmed.

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HOLLENHORST

J.

We concur:

RAMIREZ

P.J.

MILLER

J.